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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/562,616

12/23/2005

Bernard Cleenewerck

19449

6178

7590

03/11/2009

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/11/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/562,616	<b>Applicant(s)</b> CLEENEWERCK, BERNARD	
	<b>Examiner</b> Carolyn A. Paden	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3-23-07</u> .   | 6) <input type="checkbox"/> Other: _____                          |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17, 25, 26 and 28 are , rejected under 35 U.S.C. 103(a) as being unpatentable over Sagi (4,839,192).

Sagi discloses a hard butter composition that contains the distribution of triglycerides that is set forth in claim 1 (see Table 3). In example 4, hardened rice bran wax was hydrolyzed and mixed with hardened low erucic rapeseed oil. The combination was interesterified with high oleic sunflower oil. The fat is used as a confectionery fat (column 2, lines 41-51). The claims appear to differ from Sagi in the recitation of the order of reaction. Sagi starts with hydrogenated fat sources and then interesterifies the hydrogenated fat. In Reference example 2, the fat is fractionated. It is known in the art that hydrogenation of fats generally increases the melting point of a fat. One would expect to melt fat prior to interesterification. It would have been obvious to one of ordinary skill in the art to alter the order of the chemical reaction in Sagi in order to interesterify the fat at a lower melting temperature. Although the amount of trans fat is not mentioned, it

is known in the art that complete hydrogenation results in an elimination of trans fat. One of ordinary skill in the art would interpret "extreme hydrogenation" to mean that the trans fats in the product are minimized. It is appreciated that palm oil is not mentioned in an example but Sagi mentions palm oil as a suggested oil at column 4, line 16. To use palm oil instead of rapeseed oil would have been an obvious substitution of one preferred oil for the other.

Claims 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lansbergen (WO 94/16572) as further evidenced by Goh (article) and Firestone.

Lansbergen discloses natural puff pastry margarines. The fat in the margarine is made from a blend of palm oil stearin, palm oil mid fraction and palm oil (lines bridging pages 2 & 3). The melting properties of the fat blends were measured, as shown in Table 2 on page 6, to have the properties required in claim 18. The triglyceride properties of the fat blend fall within the range of the requirements of claim 1 as shown on page 2, lines 25-32 and claim 1 of Lansbergen. Although the diglyceride content of the composition is not mentioned, it is known in the art that palm oil, palm stearin and palm olein contain diglyceride and Goh is relied upon for

evidenced of this assertion at Table III. The claims appear to differ from Lansbergen in the recitation of the method by which the product is made. The fact that a product may have been made by a different process is not seen to carry patentable weight in a product. The Lansbergen product appears to contain all of the required characteristics of the claimed product. The inclusion of hydrogenated or interesterified fat is not seen to carry patentable weight in the product. The crystallization time is seen to be a function of the crystallization temperature. No unobvious or unexpected result is seen from the crystallization time. Evidence for the low levels of C12 in palm and sunflower oils is provided by Firestone.

Claims 1-3, 4, 6-11, 14-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wieske (4,702,928) as further evidenced by Goh (article) and Firestone.

Wieske discloses fat blends for margarine. In example V a fat blend is made from three fats. Fat 1 is an interesterified mixture of sunflower oil and palm oil, which is subsequently hydrogenated. Fat 2 is palm olein, which is known in the art to be a fractionated fat. Fat 3 is randomly interesterified palm oil and soybean oil. The combination has the triglyceride assortment of claim 1 (column 6, lines 30-33). Margarine is

made with this fat blend. Example VII shows a margarine formulation. Claim 1 appears to differ from Wieske in the recitation of the diglyceride content of the claims. Goh is relied upon to show that palm oil and palm olein are known in the art to contain diglyceride (Table III). It would have been obvious to one of ordinary skill in the art to expect the fat blend of Wieske to contain at least 1% diglyceride because of the palm oil in the blend. Evidence for the low levels of C12 in palm and sunflower oils is provided by Firestone.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private

PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794